

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF:

**APPLICATION FOR CERTIFICATION FOR THE
SAN FRANCISCO ELECTRIC RELIABILITY
PROJECT**

DOCKET No. 04-AFC-1

RULING RE CARE'S REQUEST FOR RECONSIDERATION

At the May 31, 2006 evidentiary hearing the Hearing Officer ruled against CARE's attempt to introduce into evidence, over Applicant's objection, the transcript of a January 12, 2004, California Public Utilities Commission (CPUC) hearing. On June 5, 2005, CARE requested reconsideration and clarification of the ruling.¹ We reconsider the ruling here and again deny admission of the transcript into evidence.

I. BACKGROUND

At the evidentiary hearing on April 27, 2006, Applicant objected to CARE's initial attempt to introduce into evidence the transcript of a CPUC hearing held on January 12, 2004. (4/27/06 RT 7-8.) The subject of the CPUC evidentiary hearing was the Pacific Gas and Electric Company's (PG&E) Application for a Certificate of Public Convenience and Necessity authorizing construction of the Jefferson-Martin 230 kV Transmission Project.²

CARE sought to include the hearing transcript as an attachment to the testimony of CARE's witness Martin Homec. Applicant objected on the grounds that the transcript testimony was hearsay and that CARE had failed to demonstrate that the witness cited in the CPUC transcript, PG&E employee Manho Yeung, was

¹ CARE also raises this matter, at some length, in its June 26, 2006 Opening Brief. (Opening Brief, pp. 8-13.)

² Application 02-09-043.

not available to testify in person as CARE's witness. Because CARE failed to appear at the CEC's April 27, 2006, evidentiary hearing, the Committee took the admissibility question under submission. (4/27/06 RT 7:25-9:11.)

On May 11, 2006 CARE filed a "Request for Subpoena on Manho Yeung [of] PG&E." The Committee denied CARE's subpoena request on May 17, 2006. In its ruling, the Committee found that CARE's request was an attempt to reopen the topic of Local System Effects after the evidentiary record on that topic had been closed.

At the May 31, 2006 evidentiary hearing, CARE again attempted to introduce the CPUC transcript, as an attachment to Mr. Homec's testimony, under the topic of Alternatives. Once again, Applicant objected to admission of the transcript. (5/31/06 RT 253:24-254:5.) The Committee excluded the transcript from evidence, but did mark it for identification as Exhibit 59. (5/31/06 RT 256:18-20, 258:1-2.) On June 5, 2006, CARE filed its request for reconsideration and clarification of the ruling denying admission of Exhibit 59.

II. DISCUSSION

Applicant's objection to the prior testimony of PG&E's Mr. Yeung is that the statement is hearsay. Hearsay evidence is an utterance made outside of the hearing, which is introduced to prove the truth of matter at issue. Such hearsay is often excluded in civil suits. However, hearsay may be admissible in administrative hearings, if only to supplement or explain other evidence. [20 Cal. Code of Regs., § 1212(d).] Exceptions to the hearsay rule recognize certain circumstances which render hearsay evidence sufficiently reliable to overcome objections. Applicant based its initial hearsay objection on the fact that CARE had failed to show PG&E's Mr. Yeung was unavailable to testify at the SFERP hearing. CARE countered that its attempt to gain Mr. Yeung's attendance was

frustrated by the Committee ruling against CARE's request to subpoena Mr. Yeung.

We again reject CARE's efforts to introduce into evidence the prior testimony of Mr. Yeung for several reasons. Even assuming *arguendo* that Mr. Yeung was not available, the subject of the CPUC hearing at which his testimony occurred was the certification of the Jefferson-Martin 230 kV transmission line, *not* the certification of the SFERP. Thus, while Applicant was a party to the CPUC proceeding, its attorney lacked the same interest and motive to cross examine Mr. Yeung as Applicant would naturally have in the case at hand. Perhaps, as a result, ambiguities in Mr. Yeung's testimony were left unchallenged. The statement by Mr. Yeung, which is specifically relied upon by CARE, referred to a five-year planning horizon starting in October of 2003, during which the SFERP would allegedly not be required for reliability. (12/12/04 RT 468:8 -11; see *also* 5/31/06 RT 265:17-20.)³ However, even assuming CARE's reliance on the "five-year statement" is well placed, the statement is inconsistent with numerous other statements by Mr. Yeung in which he specifically limited his comments on the SFERP to the year 2006. Thus, when the transcript is viewed in the light most favorable to CARE's witness Mr. Homec, the prior testimony is internally inconsistent and therefore not material or probative.

However, when the transcript is more appropriately read in its entirety, it becomes abundantly clear that Mr. Yeung's prior testimony regarding the SFERP was specifically limited to the year 2006. On no less than eight occasions during the cross examination of Mr. Yeung, the questions and Mr. Yeung's answers were limited to the year 2006. (12/12/04 RT 467: 5-10, 21-26; 469: 4-5, 20-26; 470:2-3.) Because the SFERP is still in the licensing process and cannot possibly come on line in the year 2006, the prior testimony of Mr. Yeung regarding the SFERP is irrelevant.

³ Mr. Yeung's PG&E attorney noted at the time that the questions and answers were, "Vague and ambiguous as to time. In 2006, or forever?" (12/12/04 RT 469:1-2.)

III. RULING

The prior testimony of Manho Yeung given at the January 12, 2004, CPUC hearing on the Martin-Jefferson 230 kV Transmission Project is immaterial and irrelevant to this proceeding. Therefore, the transcript of the prior testimony contained in Exhibit 59 is inadmissible.

Dated July 6, 2006, at Sacramento, California.

Original signed by

JAMES D. BOYD
Commissioner and Presiding Member
San Francisco Electric Reliability Project AFC Committee

Original signed by

JOHN L. GEESMAN
Commissioner and Associate Member
San Francisco Electric Reliability Project AFC Committee